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E-filed 3/5/10

10 Attorneys for Hilda L. Solis, Secretary  
United States Department of Labor, Plaintiff

12 UNITED STATES DISTRICT COURT FOR THE  
13 NORTHERN DISTRICT OF CALIFORNIA

14 HILDA L. SOLIS,<sup>1</sup> Secretary of the United ) Case No.: C08-05643 RMW  
15 States Department of Labor, )  
16 Plaintiff, ) **PROPOSED ORDER GRANTING MOTION**  
17 v. ) FOR DEFAULT JUDGMENT AGAINST  
18 MICHAEL D. WILLIAMS, an individual; ) DEFENDANTS MICHAEL D. WILLIAMS  
19 POWER & DATA TECHNOLOGY, INC., a ) AND POWER & DATA TECHNOLOGY,  
20 California corporation; and POWER & DATA ) INC.  
21 TECHNOLOGY, INC., 401(K) PROFIT )  
SHARING PLAN, an employee pension )  
benefit plan, )  
Defendants. )  
)

<sup>24</sup>           <sup>1</sup> Hilda L. Solis was confirmed as Secretary of Labor on February 24, 2009, and is  
<sup>25</sup> substituted as Plaintiff in this action. See Fed. R. Civ. P. 25(d)

1 Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor (the  
2 "Secretary"), brought this action against Defendants Michael D. Williams, an individual; Power  
3 & Data Technology, Inc., a California corporation and the Power & Data Technology, Inc.,  
4 401(K) Profit Sharing Plan, an employee pension benefit plan,<sup>2</sup> for violations of the Employee  
5 Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1191c. The Defendants  
6 failed to timely answer the Complaint and, on August 17, 2009, the Clerk of this Court issued an  
7 Entry of Default in this matter.

8 Upon review of the moving papers, the record, and for good cause shown, it is hereby  
9 ORDERED, ADJUDGED, and DECREED that:

10 1. The Secretary's Motion for Default Judgment Against Defendants Michael D.  
11 Williams, an individual, and Power & Data Technology, Inc., a California corporation, is granted  
12 in full; and that judgment is entered in favor of the Secretary against Defendants Michael D.  
13 Williams, an individual, and Power & Data Technology, Inc., a California corporation, finding  
14 that said Defendants, acting in their fiduciary capacities:

15 a. failed to act solely in the interest of the participants and beneficiaries of  
16 the Plan and for the exclusive purpose of providing benefits to participants and their  
17 beneficiaries and defraying reasonable expenses of Plan administration, in violation of  
18 ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

19 b. failed to discharge their duties with respect to a plan with the care, skill,  
20 prudence, and diligence under the circumstances then prevailing that a prudent man  
21 acting in a like capacity and familiar with such matters would use in the conduct of an  
22 enterprise of a like character and with like aims, as required by ERISA § 404(a)(1)(B), 29  
23 U.S.C. § 1104(a)(1)(B).

24 \_\_\_\_\_  
25 <sup>2</sup>The Plan was named as a Defendant pursuant to Rule 19(a) of the Federal Rules of Civil  
Procedure solely to assure that complete relief can be granted.

1                   c.         failed to act in accordance with the documents and instruments governing  
2                   the plan as required by ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

3                   d.         caused the Plan to engage in transactions which they knew or should have  
4                   known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in  
5                   interest, of assets of the Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. §  
6                   1106(a)(1)(D); and

7                   e.         dealt with assets of the Plan in their own interests, in violation of ERISA §  
8                   406(b)(1), 29 U.S.C. § 1106(b)(1).

9                   2.         Said judgment is in the amount of \$39,325.62 in missing Plan assets, plus  
10                  \$6,865.46 in pre-judgment interest as of January 15, 2010, to compensate the Plan for lost  
11                  opportunity costs; for a total of \$46,191.08;

12                  3.         Additional pre-judgment interest is awarded through the date of entry of  
13                  judgment, at the rate provided by IRC § 6621(a);

14                  4.         Post-judgment interest is awarded through the date of collection pursuant to 28  
15                  U.S.C. § 1961;

16                  5.         An independent fiduciary shall be appointed by the Court upon motion of the  
17                  Secretary to administer the Plan, with duties including but not limited to: to conduct an  
18                  accounting of the Plan; to distribute the Plan's assets to eligible participants and beneficiaries  
19                  upon request; and ultimately terminate the Plan, when appropriate, and conclude any Plan-related  
                matters connected with the proper termination of the Plan.

20                  a.         The independent fiduciary shall have all the rights, duties and discretion of  
21                  a trustee/fiduciary under ERISA.

22                  b.         The independent fiduciary shall have full access to all data, information  
23                  and calculations in the Plan's and the Plan Administrator's possession or control.

24                  c.         The Defendants are ordered to fully cooperate with the independent  
25                  fiduciary's reasonable requests in connection with the proper administration and  
                termination of the Plan.

1           6. Defendants are required to pay for all costs associated with the appointment and  
2 retention of the independent fiduciary.

3           7. Upon the effective date of the appointment of the independent fiduciary,  
4 Defendants Michael D. Williams, an individual, and Power & Data Technology, Inc., a  
5 California corporation, are removed as fiduciaries to the Plan.

6           8. Defendant Michael D. Williams is permanently enjoined from serving as a  
7 fiduciary or service provider to any ERISA-covered employee benefit plan;

8           9. The Secretary is awarded costs of service of \$946.00 pursuant to Federal Rule of  
9 Civil Procedure 4(d)(2)(A).

10          Although defendant Williams appeared at the hearing and was given  
11 the opportunity to speak, he did not challenge the amount of  
12 damages sought.

13          Dated: 3/5/10



14          UNITED STATES DISTRICT JUDGE

15          Presented by:  
16          UNITED STATES DEPARTMENT OF LABOR

17          Deborah Greenfield  
18          Acting Deputy Solicitor

19          Lawrence Brewster  
20          Regional Solicitor

21          Danielle L. Jaberg  
22          Counsel for ERISA

23          By: /s/ Evan H. Nordby \_\_\_\_\_  
24                 Evan H. Nordby  
25                 Trial Attorney

26          Dated: January 15, 2010